

82 - 6238

NO. 6239

Office - Supreme Court, U.S.
FILED

FEB 14 1983

ALEXANDER L. STEVAS,
CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1982

JOYCELYN M. JONES AND HURIE JONES

APPELLANTS,

VS.

JEFFERSON PARISH SCHOOL BOARD

APPELLEE.

**ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS, FIFTH CIRCUIT**

JURISDICTIONAL STATEMENT

**HURIE JONES
JOYCELYN M. JONES
2103 LA QUINTA VIA
HARVEY, LOUISIANA 70058
COUNSEL FOR APPELLANTS
IN PROPER PERSON**

QUESTIONS PRESENTED

Whether or not the judicial review of the ex parte termination or firing of a tenured teacher of fifteen (15) years should be limited to a determination of whether appellee, Jefferson Parish School Board, followed the mandates or formalities of the state law or the Louisiana Teacher Tenure Act, cited as R.S. 17:441 and R.S. 17:443. Further, where appellee has subjected appellants to harassment, threats, intimidation, coercion and ultimately the ex parte termination of appellant Joycelyn M. Jones on July 20, 1981; notwithstanding the fact that no tenure hearing had been conducted or even scheduled by appellee prior to or before firing or terminating appellant Joycelyn M. Jones and where no transcript of any tenure hearing was available for judicial review by the trial and appellate courts.

II.

Whether or not appellee, Jefferson Parish School Board, followed the authority and formalities of State Law or the Louisiana Teacher Tenure Act, cited as R.S. 17:441 and R.S. 17:443; where appellee directed or told appellant Joycelyn M. Jones, a tenured teacher, in writing on July 20, 1981, prior to or before scheduling a tenure hearing, not to report to her currently assigned school for her teaching duties commencing on August 18, 1981.

Further, where appellee's agents told appellant Joycelyn M. Jones, in an open faculty meeting, that she had been officially fired or terminated as of July 20, 1981, that she had to leave Livaudais Junior High School immediately whereupon appellee's agents proceeded to physically evict appellant Joycelyn M. Jones, by having

her driven home immediately by a library clerk.

III.

Whether or not defendant-appellee, Jefferson Parish School Board's actions conformed to the mandates or authority or formalities of state law or the Teacher Tenure Act, cited as R.S. 17:441 and R.S. 17:443, when appellee directed or demanded in its certified letter, dated July 20, 1981, to appellant Joycelyn M. Jones, who is a tenured teacher of fifteen (15) years service, not to report to her teaching duties on August 18, 1981, the first day of school; where appellee had not conducted any due process tenure hearing at which appellant Joycelyn M. Jones had been found guilty of any administrative charges upon which she could have been legally fired or terminated, pursuant to R.S. 17:441 and R.S. 17:443.

Further, where appellee had never given appellant notice of any plans or schedule to conduct a tenure hearing prior to firing or terminating appellant on July 20, 1981, *but appellee did, only after appellants had actually given appellee notice for the filing of this lawsuit on September 1, 1981, hastily inform appellant by certified mail on September 3, 1981, that a teacher tenure hearing would be conducted on her behalf on October 12, 1981.*

IV.

Whether or not appellants are required by any State or Federal laws to attend or participate in any alleged administrative or Post-Termination tenure hearing having been later scheduled and conducted by appellee, contrary to state law, cited as R.S. 17:441 and R.S. 17:443; where after appellant Joycelyn M. Jones had already been fired or

terminated, a lawsuit has been filed thereon, a trial on the merits of appellee's ex parte termination of appellant has been conducted and appellants are continuing to litigate their claims of harassment, threats, intimidation, coercion and unlawful termination of employment in the Federal Courts.

V.

Whether or not Plaintiff-Appellants herein are required to prove or establish *whether defendant-appellee herein, Jefferson Parish School Board, specifically intended to violate appellants' civil rights, pursuant to state law or the teacher tenure act, cited as R.S. 17:441 and R.S. 17:443 and pursuant to Federal laws cited as 42 U.S.C. sections 1981, 1983, 1985, the First, Fifth and Fourteenth Amendments to the Constitution of the United States.*

VI.

Whether or not appellants were wrongfully denied a Temporary Restraining Order and Preliminary and Permanent Injunction; where appellee, and its administrative agents were then actively engaging in illegal actions of harassments, threats, intimidations, coercion and ex parte termination or firing of appellant(s), without following the authority and formalities of state laws, or the Teacher Tenure Act, cited as R.S. 17:441, R.S. 17:443 and the state statute authorizing Evaluation of Tenured Teachers, cited as R.S. 17:24.3 and R.S. 17:391.5, which substantially threatened appellants with immediate irreparable injury, loss and damages to their present and future, life, liberty, property, reputations and career opportunities for themselves and their minor children.

TABLE OF CONTENTS

	PAGES
QUESTIONS PRESENTED.....	i-iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES.....	v-vi
OPINIONS BELOW.....	1
JURISDICTION OF THE COURT.....	1-2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2-9
STATEMENT OF THE CASE.....	9-13
SUBSTANTIALITY OF THE FEDERAL QUESTION.....	13-14

TABLE OF CONTENTS (APPENDICES)	PAGES
APPENDIX A—OPINIONS AND ORDERS OF THE FIFTH CIRCUIT COURT OF APPEALS.....	A-1—A-5
APPENDIX B—OPINIONS AND ORDERS OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA.....	A-6—A-14
APPENDIX C—JUDGMENT APPEALED FROM AND ORDER ON REHEARING.....	A-15—A-16
APPENDIX D—NOTICE OF APPEALS TO THE SUPREME COURT OF THE UNITED STATES.....	A-17—A-20

TABLE OF AUTHORITIES

CASES:	PAGES
<i>Bell V. Burson</i> , 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed. 90 (1971).....	12
<i>Board of Regents V. Roth</i> , 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (7th Cir. 1972).....	12, 13
<i>Cook V. Natchitoches Parish School Board</i> , 343 So. 2d 702.....	11
<i>Damico V. California</i> , 389 U.S. 416 (1967).....	6
<i>Fleming V. Nestor</i> , 363 U.S. 603, 611.....	12
<i>Goldberg V. Kelly</i> , 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).....	12, 13
<i>Granderson V. Orleans Parish School Board</i> , 216 So.2d 643.....	11
<i>Howell V. Winn Parish School Board</i> , 322 So.2d 822.....	11
<i>McCoy V. Tangipahoa Parish School Board</i> , 308 So.2d 382.....	11
<i>McNeese V. Board of Education</i> , 373, U.S. 668 (1963).....	6
<i>Monroe V. Pape</i> , 365 U.S. 167 (1971).....	6, 9
<i>Perry V. Sindermann</i> , 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (5th Cir. 1972).....	12, 13
<i>State ex rel. Rath V. Jefferson Parish School Board</i> , 206 La. 317, 18 So.2d 153, 167-168.....	11
<i>Rook V. Rapides Parish School Board</i> , 366 So.2d 605.....	11
<i>Slochow V. Board of Education</i> , 350 U.S. 551.....	12
<i>Wiemann V. Upedgraff</i> , 344 U.S. 183.....	12

<i>Wilwording V. Swenson</i> , 404 U.S. 429 (1971).....	6
<i>Wisconsin V. Constantineau</i> , 400 U.S. 433, 91 S.Ct. 505, 27 L.Ed.2d 515 (1971).....	12

CONSTITUTIONAL AND STATUTORY AUTHORITIES

	PAGES
28 U.S.C. Section 1331.....	2, 7
28 U.S.C. Section 1343 (3) and (4).....	2, 6, 7
28 U.S.C. Section 1915.....	2
28 U.S.C. Section 2201.....	2
42 U.S.C. Section 1981.....	2, 14
42 U.S.C. Section 1983.....	2, 6, 7, 8, 9, 14
42 U.S.C. Section 1985.....	2, 14
R.S. 17:441.....	2, 3, 5, 6, 9, 10, 12, 13, 14
R.S. 17:443.....	2, 3, 5, 6, 9, 10, 12, 13, 14
R.S. 17:391.5.....	2
R.S. 17:24.3.....	2
R.S. 17:281.....	2
 Louisiana Civil Code Articles	
2, 5, 2317, 2320, 2324.....	2
 Constitution of the United States Amendments	
1st Amendment.....	2, 14
5th Amendment.....	2, 6, 14
14th Amendment.....	2, 6, 7, 8, 10, 11, 14

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

JOYCELYN M. JONES AND HURIE JONES,
APPELLANTS,

VS.

JEFFERSON PARISH SCHOOL BOARD,
APPELLEE.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS, FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

OPINIONS BELOW

None of the lower court opinions and orders have been published. The Fifth Circuit Court of Appeals' Opinion was filed September 17, 1982, and its order filed October 28, 1982 denying appellants' petition for rehearing and suggestion for rehearing en banc that are reprinted in the appendix herein.

The Federal District Court's decision dismissing appellants' complaint was filed on September 25, 1981 is reprinted in the appendix herein.

JURISDICTION OF THE COURT

The United States Court of Appeals for the Fifth Circuit filed its opinion in this case on September 17, 1982. Appellants petitioned for a Rehearing and Suggestion for Rehearing En Banc was filed on October 15, 1982 and

denied by "order," filed on October 28, 1982. Notice of appeal was filed in the Fifth Circuit Court of Appeals of the United States on November 1, 1982.

The time within which to docket this appeal expires on February 25, 1983. Timely docketing of this appeal has been made. The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. section 1331 and 28 U.S.C. 1343 (3) and (4).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appellants filed this lawsuit against appellees pursuant to the Constitution of the United States; specifically the First (1st), Fifth (5) and Fourteenth (14th) Amendments and applicable statutory counterparts, cited as 42 U.S.C. Section 1981, 42 U.S.C. Section 1983 and 42 U.S.C. Section 1985, 28 U.S.C. Section 1915, Rule 24 (a) of the Federal Rules of Civil Procedure, Rules 8(a), 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. Section 2201.

Further, pendent jurisdiction of this court is invoked for the purpose of redressing appellants state law claims, pursuant to Louisiana Civil Code Articles 2315, 2317, 2320, 2334, and Louisiana Revised statutes R.S. 17:441, R.S. 17:443, R.S. 17:281, R.S. 17:391.5 and R.S. 17:24.3

Plaintiff-Appellants, who are black citizens, are alleging that defendant-appellee and its administrative agents conspired jointly and covertly with and in support of the appellees and third parties' attorneys named in civil action no. 80-3734 or United States Supreme Court application No. 574, styled as Hurie Jones, ET AL VS. John

Mitchell, ET AL, to deprive appellants of their civil rights, privileges and immunities under color and pretense of state law, cited above in the jurisdictional and constitutional predicate. Therefore, *the unlawful termination of appellant Joycelyn M. Jones by appellee herein was ultimately designed and calculated to render appellants' financially insolvent and unable to pay fees and charges required in prosecuting the companion lawsuit alluded to above in defense of appellants' interest, forcing appellants to flee or move out of Jefferson Parish*; thereby depriving appellants of due process of laws and equal protection of laws. Thus, appellants have been substantially deprived by appellee of a quality life, liberty, property, good reputations and career opportunities past, present and future.

Appellants, Joycelyn M. Jones and Hurie Jones have been employed by appellee, Jefferson Parish School Board, as permanent teachers for periods of fifteen (15) and six (6) years respectively at the time this lawsuit was filed on September 1, 1981.

Thus, appellants requested that the Federal District Court grant them a Temporary Restraining Order and Preliminary and Permanent Injunction which compelled or ordered appellee to stop proceeding contrary to state law, as manifested by, overt acts of harassment, threats, intimidation, coercion, stigmatization of appellants which caused them to be exposed to hatred and ridicule on their jobs and in their community and finally to rescind appellee's illegal firing or termination of appellant Joycelyn M. Jones from her job as teacher without following the formalities of state law or the Teacher Tenure Act cited as R.S. 17:441 and R.S. 17:443; that appellee's actions have and are continuing to cause appellants to suffer irreparable injury, loss and damages to their present and

future career opportunities.

On July 24, 1981, appellant Joycelyn M. Jones received a certified letter, dated July 20, 1981, which directed or demanded that Mrs. Jones not report to her last official teaching assignment, at Livaudais Junior High School on August 18, 1981, which was the first (1st) day of school.

Thus, appellant Joycelyn M. Jones, in an abundance of caution, timely reported to her teaching duties, at Livaudais Junior High School, on August 18, 1981; notwithstanding the fact that appellant Joycelyn M. Jones had received written notice from the Jefferson Parish Superintendent of Public Schools, dated July 20, 1981, which stated that Mrs. Jones had been terminated or fired.

However, appellant Joycelyn M. Jones upon reporting to her teaching duties on August 18, 1981, was immediately subjected to great embarrassment, humiliation, emotional and physical stress, stigmatization, hatred and ridicule, at her assigned school and in her community by appellee's administrative agents, principal William Sumrall and assistant principal Cheryl Ciolino, by being told in an open faculty meeting, in full view and hearing of all the other teachers, to get out or to immediately leave the premises of the Livaudais Junior High School.

Furthermore, principal William Sumrall personally stated to appellant Joycelyn M. Jones that she had been officially terminated or fired, as a tenured teacher of fifteen (15) years, by the Jefferson Parish School Board, as of July 20, 1981; that Mrs. Jones had to leave the premises of the school immediately, whereupon principal William Sumrall directed his library clerk, Mrs. Ida Ballay, to drive

appellant Joycelyn M. Jones to her home on August 18, 1981.

Thereafter, appellee, Jefferson Parish School Board, having received actual notice that appellant Joycelyn M. Jones and Hurie Jones had filed this lawsuit on September 1, 1981, which urgently requested that the trial court grant to appellants a Temporary Restraining Order and Permanent Injunction immediately enjoining appellee and its administrative agents from harassing, threatening, intimidating, coercing and ultimately subjecting appellant Joycelyn M. Jones to termination or firing on July 20, 1981, without conducting or even scheduling a teacher tenure hearing and without finding appellant Joycelyn M. Jones guilty of any administrative charges.

Appellant, Joycelyn M. Jones was a tenured teacher having acquired a vested entitlement to a pre-termination due process teacher tenure hearing and cannot pursuant to state law, cited as R.S. 17:441 and R.S. 17:443, be subjected to summary or ex parte termination or firing as was unlawfully done by appellee under color and pretense of state law which substantially deprived appellant Joycelyn M. Jones of equal protection and due process of State and Federal Laws, for which injunctive relief is a proper remedy.

Thus, appellee, Jefferson Parish School Board, in a desperate effort to hide or deceive the trial and appellate courts into believing that an appropriate tenure hearing was pending or scheduled prior to the filing of this lawsuit by appellants on September 1, 1981, whereupon appellee hastily mailed to appellant Joycelyn M. Jones a certified letter, which was received by Mrs. Jones on September 3, 1981, informing her that a tenure hearing was scheduled to

be conducted on October 12, 1981 in a covert conspiratorial attempt to conceal the documented fact that appellant Joycelyn M. Jones, a tenured teacher, had already been subjected to an unlawful ex parte termination or firing on July 20, 1981, without affording her the legally required due process tenure hearing as mandated by state law or the Louisiana Teacher Tenure Act, cited as R.S. 17:441 and R.S. 17:443 and by Federal Law as mandated by the United States Constitution; specifically by the Fifth (5th) and Fourteenth (14th) Amendments. (Please read appellants' original brief, reply briefs, and petition for rehearing and suggestion for rehearing en banc directed to the United States Court of Appeals for the Fifth Circuit.)

Appellants have alleged substantial causes of action, pursuant to 42 U.S.C. section 1983, of which the Federal District Court had jurisdiction pursuant to 28 U.S.C. section 1343.

Therefore, appellees illegal actions of firing or terminating appellant Joycelyn M. Jones on July 20, 1981, and thereafter hastily mailing appellant a certified letter on September 3, 1981, giving appellant Joycelyn M. Jones notice of a tenure hearing scheduled to be conducted for her on October 12, 1981, after appellants had already filed a lawsuit on September 1, 1981, to redress appellee's unlawful actions of ex parte termination of Mrs. Jones on July 20, 1981; thus the law suit filed by appellants on September 1, 1981 in Federal District Court takes precedence over the later hastily scheduled administrative hearing in this case. *McNeese V. Board of Education*, 373 U.S. 668 (1963), *Wilwording V. Swenson*, 404 U.S. 429 (1971), *Damico V. California*, 389 U.S. 416 (1967) and *Monroe V. Pape*, 365 U.S. 167 (1961). Therefore, exhaustion of state created remedies, is not required to invoke

Federal Court jurisdiction whether administratively, such as attending a teacher tenure hearing provoked or scheduled and conducted by appellee only after appellants have previously filed and commenced prosecuting a lawsuit which requested injunctive relief against appellee for failing and refusing to follow state law that mandated in the first instance that appellee provide for appellant a pre-termination tenure hearing before firing her. Furthermore, exhaustion of state created administrative or legal remedies is not a prerequisite to the exercise of Federal Court Jurisdiction pursuant to 42 U.S.C. section 1983.

Thus, the constitutional rights sought to be protected herein are guaranteed by the Fourteenth (14th) Amendment Right to equal protection and due process of laws, therefore their deprivation, as enunciated herein, is sufficient to confer jurisdiction of this court pursuant to 28 U.S.C. section 1331. The above delineated set of circumstances are also sufficient to confer the jurisdiction of this court pursuant to 28 U.S.C. section 1343(3) and (4).

Further, as anticipated by Congress, 28 U.S.C. section 1343(3) provides for invoking the original jurisdiction of this court for the purpose of redressing deprivation of plaintiffs-appellants constitutional rights under color and pretense of state law(s) of any rights, privileges and immunities secured to them by the United States Constitution or acts of Congress guaranteeing all citizens equal rights. Furthermore, 28 U.S.C. section 1343(4) provides for invoking the original jurisdiction of this court to recover damages or to secure equitable or other relief; pursuant to any act of Congress providing for the protection of citizens civil rights.

Therefore, the above delineated set of circumstances

are in all respects sufficient to confer the jurisdiction of this court pursuant to 42 U.S.C. section 1983; as promulgated by Congress for the protection of civil rights.

The Congress of the United States has made its power available to the Supreme Court of the United States to enforce the provisions of the Fourteenth (14th) Amendment to the United States Constitution against those who carry a badge of authority of a state and represent it in some capacity; whether they act in accordance with their authority or not.

Thus, appellants allegations of facts constituting a deprivation under color and pretense of state authority of rights, privileges and immunities, guaranteed by the Fourteenth (14th) Amendment, satisfies to that extent the requirements of 42 U.S.C. section 1983; thereby giving appellants a right of action against a person who under color and pretense of state laws, custom, and usage subjects another to the deprivation of any rights, privileges and immunities secured by the Federal Constitution.

Therefore, it is not a legally acceptable answer to assert as a defense that the state has a law which if enforced would give appellants a remedy or requested relief; *thus the Federal remedy is supplementary to the state remedy and the state remedy need not be first sought and refused before the Federal remedy is invoked.* Therefore, Congress intended that the purpose of 42 U.S.C. section 1983 give a right of action against a person who, under color and pretense of state law, custom or usage, subjects another to the deprivation of any right, privilege and immunity secured by the Federal Constitution, has several purposes: (1.) it overrides certain kinds of state laws; (2.) it provides a remedy where state law is inadequate; and (3.) it provides a

Federal remedy though the state remedy, adequate in theory, is not available to its citizens in practice.

Finally, misuse of power, possesses by virtue of state law(s) and made possible only because the wrong-doer is clothed with the authority of state law, is an action taken "*under the color and pretense of state law*"; within the meaning of 42 U.S.C. section 1983; which does not require specific intent to deprive a person of a Federal right, privilege or immunity to create actionable liability. See *Monroe V. Pape*, 365 U.S. 167, 5 L.Ed.2d 492, 81 S.Ct. 473.

STATEMENT OF THE CASE

JUDICIAL REVIEW OF REMOVAL OR TERMINATION OF A PERMANENT OR TENURED TEACHER PURSUANT TO STATE LAW; CITED AS R.S. 17:441 and R.S. 17:443.

The standard of judicial review of appellee, Jefferson Parish School Board's actions in subjecting appellant Joycelyn M. Jones to summary or ex parte termination, as a permanent or tenured teacher, is *whether there is a rational basis for the school board's actions or determination that is supported by substantial evidence as contained in the transcript of an administrative tenure hearing, scheduled and conducted prior to the filing of this lawsuit on September 1, 1981, at which appellant Joycelyn M. Jones was actually found guilty of administrative charges*. Most importantly, whether appellant Joycelyn M. Jones was given a fair opportunity to defend or refute all administrative charges alleged against her at an administrative due process teacher tenure hearing conducted according to the authority and formalities of the Louisiana Teacher Tenure Act or state law cited as R.S. 17:441 and

R.S. 17:443 and pursuant to the due process of law and equal protection of law provisions of the Fourteenth (14th) Amendment of the United States Constitution.

Thus, the six (6) substantial issues alluded to or delineated in the first part of the jurisdictional statement, pertaining to this case, constitutes in every respect the major assignments of error committed by the trial and appellate courts; which appellants now direct this court's careful attention to as being the scope of judicial review of the appellee's action of subjecting appellant Joycelyn M. Jones, a tenured teacher, to ex parte termination.

Therefore, this court should limit its judicial inquiry to a determination of whether the action of the appellee, Jefferson Parish School Board was (1.) done in accordance with the authority and formalities of the Louisiana Teacher Tenure Act or state law, cited as R.S. 17:441 and R.S. 17:443 and (2.) supported by substantial evidence as contained in the transcript of an administrative due process tenure hearing, scheduled and conducted prior to the termination of appellant Joycelyn M. Jones on July 20, 1981 and prior to the filing of this lawsuit on September 1, 1981, at which appellant Joycelyn M. Jones was actually found guilty of administrative charges.

Conversely, whether the appellee, Jefferson Parish School Board's action of termination constitutes an arbitrary and capricious decision and thus an abuse of its discretion which violates the state tenure law enunciated above.

Finally, the principles of law delineated above, in an effort to assist this court in its judicial review, have been consistently stated and restated in a succession of cases

decided in the trial and appellate courts of the state of Louisiana as supported by state ex rel. *Rath V. Jefferson Parish School Board*, 206 La. 317, 19 So.2d 153, 167-168, *Granderson V. Orleans Parish School Board*, 216 So.2d 643, *McCoy V. Tangipahoa Parish School Board*, 308 So.2d 382, *Howell V. Winn Parish School Board*, 322 So.2d 822, *Cook V. Natchitoches Parish School Board*, 343 So.2d 702 and *Rooks V. Rapides Parish School Board*, 366 So.2d 605.

Thus, the requirements of procedural due process of law and equal protection of law applies only to the deprivation of interest encompassed by the Fourteenth (14th) Amendment's protection of liberty and property, which applies to this case when appellee subjected appellant Joycelyn M. Jones to summary or ex parte termination; notwithstanding the fact that appellant was a permanent tenured teacher of fifteen (15) years service.

Therefore, as a matter of constitutional and statutory law a tenured or permanent teacher cannot be "discharged except for being found guilty of written and signed administrative charges at a due process tenure hearing" conducted pursuant to specified procedures, enunciated by the Louisiana Teacher Tenure Act, cited as R.S. 17:441 and R.S. 17:443; which appellee did not do in terminating a tenured teacher such as appellant Joycelyn M. Jones on July 20, 1981. Appellants urgently suggest that this court take special notice of the reversible prejudicial error committed in that neither the Federal District Court's opinion (proposed finding of fact) nor the Fifth Circuit Court's opinion cites or mentions the Louisiana Teacher Tenure Act, R.S. 17:441 and R.S. 17:443, as having anything to do with terminating the tenured teacher Joycelyn M. Jones.

This court and others have clearly enunciated the scope of procedural due process protection, as guaranteed by the Fourteenth Amendment, in a well known series of cases *e.g.*, *Perry V. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (5th Cir. 1972); *Board of Regents V. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (7th Cir. 1972); *Bell V. Burson*, 402 U.S. 535, 91 S.Ct. 1586; 29 L.Ed. 90 (1971); *Wisconsin V. Constantineau*, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971) and *Goldberg V. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed. 287 (1970).

Thus, this and other Federal courts have consistently held that a person receiving welfare benefits under statutory and administrative standards defining eligibility for them has a vested interest in continued receipt of these benefits that are safeguarded by the procedural due process and equal protection of law provisions of the Fourteenth Amendment of the Federal Constitution. See *Goldberg V. Kelly*, 397 U.S. 254, *Fleming V. Nestor*, 363 U.S. 603 and 611.

Similarly, in the area of public employment, this and other Federal courts have held that a public college professor dismissed from an office held under tenure provisions, *Slochower V. Board of Education*, 350 U.S. 551, and a college professor dismissed during the terms of an existing contract, *Wieman V. Upedgraff*, 344 U.S. 183, have a property interest in continued employment safeguarded by the due process clause of the Fourteenth Amendment and state statutory substantive laws which creates the claim(s) to entitlements; such as the Louisiana Teacher Tenure Act cited as R.S. 17:441 and R.S. 17:443.

Appellant, Joycelyn M. Jones property and liberty interest to continued employment, of course, are not created

by the United States Constitution nor the several amendments thereto. Rather, appellant's claims to entitlement are created and their dimensions are defined by existing rules or understanding that stems from an independent source, such as state law as in the instant case, cited as R.S. 17:441 and R.S. 17:443; that secures certain benefits and that support claims of entitlement to all benefits derived from continued employment. See *Board of Regents V. Roth, supra*, 408 U.S. at 569-571, 92 S.Ct. 2701 (7th Cir. 1972); *Perry V. Sindermann*, 408 U.S. 593, 601 (5th Cir. 1972).

Thus, the welfare recipient in *Goldberg V. Kelly*, 397 U.S. 254, had a claim of entitlement to welfare payments that were grounded in the statute defining eligibility for them. The recipient had not shown that they were, in fact, within the statutory terms of eligibility, but the welfare recipient had a substantive right to a due process hearing at which the recipient might vindicate their claims.

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents fundamental and substantial questions of tenured employees state created substantive and procedural rights, of property and liberty interest, to continued employment as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

An important function of the Federal District Courts is the equity power to issue injunctions to enjoin an illegal action that is substantially detrimental to plaintiffs-appellants; which if continued will cause appellants and their four minor children to suffer irreparable injury, loss and damages to all aspects of their lives.

Appellee's actions have destroyed appellants career opportunities in education and all other possible options available in other fields, thereby rendering appellants financially insolvent, forced to lose their family home, liable to constant harassment by creditors, loss of excellent credit ratings due to appellee's actions, loss of sixteen years of accumulated bank savings, forced to sell investment properties, destroyed appellants' good name, reputations and their ability to give their four daughters a good high school and college education.

Appellants, Joycelyn and Hurie Jones have been rejected or denied teaching positions, in Louisiana and Texas, after having applied for and received interviews for more than twelve positions since October 1981; due to appellee intentionally and maliciously placing in their personnel files and distributing to appellants' prospective employers bad reference data of a negative, stigmatizing and irreparable nature. Thus, damages will not be an adequate remedy or protection of appellants' rights, privileges and immunities under law(s).

Thus, appellants filed this civil complaint on September 1, 1981 to invoke the equitable powers of the trial court to immediately enjoin the appellee from consummating a protracted period of harassment, threats of termination, intimidation, coercion and actual firing or ex parte termination of appellant(s) on July 20, 1981, which substantially violated the substantive and procedural aspects of appellant(s') civil rights under state law, or the Louisiana Teacher Tenure Act, cited as R.S. 17:441 and R.S. 17:443 and under Federal Law(s), cited as 42 U.S.C.A. sections 1981, 1983, 1985, the First (1st), Fifth (5th) and Fourteenth (14th) Amendments to the United States Constitution.

Respectfully submitted in
proper person by:

Hurie Jones

Joycelyn M. Jones
2103 La Quinta Via
Harvey, Louisiana 70058
(504) 367-9621

Attorney for Appellee
Jefferson Parish School Board
Jack A. Grant
220 Lavoisier Street
Gretna, Louisiana 70053
(504) 368-7888

A-1

APPENDIX "A"

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**No. 81-3601
Summary Calendar**

JOYCELYN M. JONES, et al.,

Plaintiffs-Appellants,

versus

JEFFERSON PARISH SCHOOL BOARD,

Defendant-Appellee.

**Appeal from the United States District Court
for the Eastern District of Louisiana**

(SEPTEMBER 17, 1982)

**Before CLARK, Chief Judge, POLITZ and HIGGIN-
BOTHAM, Circuit Judges.**

PER CURIAM:

**This action was brought pursuant to 42 U.S.C. §§
1983 and 1985 and 28 U.S.C. § 1343 by Mrs. Joycelyn
Jones. Mrs. Jones alleged that she was wrongfully ter-
minated from her teaching position by appellee, the Jeffer-
son Parish School Board. The district court denied Jones'
motion for a preliminary injunction after a full adversary**

hearing. Jones' assignments of error on appeal are without merit. We affirm the district court's judgment.

Jones moved for both a temporary restraining order and a preliminary injunction enjoining the school board from terminating her employment. The temporary restraining order was immediately denied. At the conclusion of the hearing on preliminary injunction, defendants moved to dismiss the action. The court from the bench denied the motion for a preliminary injunction and dismissed all of Jones' claims. Jones filed timely notice of appeal. Two and one-half months after the appeal was taken the district court entered a written order dismissing Jones' suit. Three months after appeal the district court entered its findings of fact and conclusions of law on the preliminary injunction and dismissal phases of the case. We treat this appeal as both from the denial of preliminary injunction and the dismissal of the action. Fed. R. App. Proc. 4(a)(2).

Jones was terminated from her teaching position by her employer, the Jefferson Parish School Board. She alleged that she was terminated because she is black and because she engaged in various labor activities. She further alleged that the school officials were part of a far-reaching conspiracy which is the subject of a related case we have today decided. Jones, et al. v. Mitchell, et al., No. 80-3734. After the lengthy preliminary injunction hearing, the district court concluded that Jones was terminated for willful neglect of duty and incompetency, and not for any improper reason. Jones argues, as she must to attack fact findings on appeal, that the court's findings were clearly erroneous. F.R. Civ. P. 52(a); Williamson v. Brown, 646 F.2d 196, 200 (5th Cir. 1981). Review of the district court's denial of a preliminary injunction is limited to determining whether the court abused its discretion. State of Texas v.

Seatrains Intern., S.A., 518 F.2d 175, 179 (5th Cir. 1975). The record supports the district court's findings. We affirm its denial of preliminary injunctive relief.

During the 1979-80 and 1980-81 school years, five different school officials observed Jones' classroom practice and evaluated her performance no less than thirteen times. The reports consistently indicated that Jones was unable to discipline her students and had difficulty in presenting her lesson plans. On at least one occasion, Jones demonstrated a clear lack of knowledge of the subject matter she was teaching. In 1980, she was officially placed on a "remediation program" designed to correct her deficient performance. The consistently unfavorable evaluations demonstrate that the program was unsuccessful in correcting Jones' deficiencies. The record also indicates that Jones violated a School Board Guideline when she engaged in the unauthorized sale of candy on school grounds at improper times. These facts adequately support the district court's finding that the school board terminated Jones' employment because her teaching performance did not improve significantly from 1979 to 1981.

Jones argues that her admittedly poor performance was the result of an impossible teaching schedule. Most of her students were the least academically and socially advanced students at that grade level who tended to present the most difficult discipline problems. The district court found that Jones was assigned more remedial students than the other English teachers because of another teacher's absence on sabbatical leave, and because of Jones' lack of recent experience in teaching literature, the content of the coursework presented to more advanced students. The court found that other teachers received more remedial students than Jones during the following

school year, and that black teachers were not assigned remedial students more frequently than white teachers. These findings are not clearly erroneous.

Jones also alleges that the school board failed to follow the procedural requirements mandated by state law when it terminated her employment. The Louisiana statutory requirement of formal notice and hearing, La. Rev. Stat. 17:391.5, contemplates a reasonable and substantial compliance with the general principles of due process of law. *Johns v. Jefferson Davis Parish School Board*, 154 So.2d 581, 584 (La. App. 3d Cir. 1963). The district court concluded that the appellee school board substantially complied with the relevant statutory requirements, and that Jones' due process rights were not violated. We agree. Jones received written notice of her proposed termination on May 4, 1981. The notice gave a detailed explanation of Jones' performance as a teacher. On May 15, 1981, Jones requested a private termination hearing. Her hearing was originally scheduled in June, but was never held because her attorney indicated that Jones planned to resign her position. When Jones did not resign, the hearing was rescheduled for October 12, 13, and 15. She was notified of the hearing on September 3, 1981. The hearing was duly held on the scheduled dates. At the hearing, the board voted to adopt the superintendent's recommendation that Jones' employment be terminated. The decision was publicly announced on October 21, 1981. The district court's conclusion that the school board did not violate Jones' right to due process of law is supported by the record.

Jones makes numerous other allegations challenging the school board's actions. We have considered each of these allegations and find them all to be without merit. The

A-5

district court's judgment is

AFFIRMED.

APPENDIX "B"

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOYCELYN M. JONES
HURIE JONES**

CIVIL ACTION

PLAINTIFFS

VERSUS

NO. 81-3563

**JEFFERSON PARISH
SCHOOL BOARD**

SECTION "E", MAG. 2

DEFENDANT

PROPOSED FINDINGS OF FACT

1.

**Joycelyn M. Jones is a duly certified tenured teacher
with the Jefferson Parish School Board.**

2.

**In the beginning of the 1979-80 school year, she and
all English teachers were evaluated pursuant to the provi-
sions of LA. R.S. 17:391.5 and the provisions of the Jeffer-
son Parish School Board Tenured Teacher Evaluation Pro-
gram.**

3.

**An initial conference was held by the Principal of
Livaudais Middle School, William Sumrall, August 22,
1979.**

A-7

4.

A teacher's strike began the day after the initial conference and lasted until the beginning of October, 1979.

5.

Mrs. Jones' personal goals for the 1979-80 school year were not established timely.

6.

Mrs. Jones was assigned to four Level III classes which were more classes than any other English teacher was assigned for the 1979-80 school year. Mrs. Cheryl Ciolino, Assistant Principal, assigned these classes because one of the English teachers, Mrs. Lane, was on sabbatical leave during the 1979-80 school year and her classes had to be divided among the other English teachers. Mrs. Jones received the Level III classes because such classes dealt with English Grammar and if Mrs. Jones had received Mrs. Lane's other classes, she would have been required to teach English literature, which Mrs. Jones had not taught in recent years.

7.

During the 1980-81 school year while Mrs. Jones was being further evaluated under the Remediation Program of the Jefferson Parish School Board, she taught only two Level III classes and other English teachers had more Level III classes than she taught that year.

On November 26, 1979, Cheryl Ciolino, conducted a classroom observation of Joycelyn Jones in which the students were not all actively participating in the learning process. Ms. Ciolino recommend a change in the format of Mrs. Jones' lesson plans and also recommended a certain seating arrangement to help control classroom behavior. She also suggested that Mrs. Jones better utilize classroom time and proceed faster with the subject matter being taught. A post-classroom observation meeting was held between Mrs. Jones and Ms. Ciolino at which time the above points were discussed and Mrs. Jones was given an opportunity to respond to Ms. Ciolino's observations.

On January 3, 1980, Ms. Ciolino conducted a second classroom observation of Mrs. Jones in which she found that Mrs. Jones was not prepared for the subject matter she was teaching and that she had trouble managing the students in the classroom. A post-observation conference was held between Ms. Ciolino and Mrs. Jones in which time the above points were discussed with her and Mrs. Jones was given an opportunity to respond. Ms. Ciolino also requested help from the English Consultant.

On January 28, 1980, Margaret S. Goodman, English Consultant, observed Mrs. Jones' English class in which she found Mrs. Jones was not being specific enough with her directions to the students nor was she maintaining order in the classroom during roll call. She suggested different classroom procedures for Mrs. Jones and recom-

mended she better pace the classroom activities by being more prepared for class.

11.

On January 22, 1980, Mr. Milton Skorlich, Personnel Evaluator, observed Mrs. Jones' classes and suggested to her that she give better instructions to the students, increase her monitoring techniques by circulating through the classroom and prepare more examples to give to the students during class.

12.

On February 21, 1980, Margaret Goodman again observed Mrs. Jones' English class in which she found that Mrs. Jones was not maintaining order among the students and that the noise level was too high for effective teaching. She found Mrs. Jones was also not giving specific directions and assignments to the students along with certain ineffective teaching techniques on the part of Mrs. Jones.

13.

On February 27, 1980, Mr. Sumrall observed Mrs. Jones' English class in which he observed that Mrs. Jones had trouble maintaining classroom discipline and was having trouble with her lesson plans. A post-observation conference was held to discuss these points on March 11, 1980 at which time Mrs. Jones had an opportunity to respond.

14.

On February 26, 1980, Milton Skorlich during his

classroom observation found that students were not paying attention and were leaving their seats and walking around the classroom in addition to refusing to follow Mrs. Jones' directives. Also, there was an unsatisfactory noise level throughout the class period. Mr. Skorlich recommended to Mrs. Jones that she maintain a fixed seating arrangement and require the students to always sit in the same seats. Also, he suggested that she establish rules and procedures governing the behavior of students. Overall, he made approximately twelve suggestions to her to assist in improving her performance in the area of classroom management.

15.

On May 14, 1980, a conference was held between William Sumrall and Joycelyn Jones at which time Mrs. Jones' professional competency was discussed and the particular areas in which were in need of improvement as of May, 1980 (See P-6). At this meeting, Mrs. Jones was placed on a Remediation Program for the 1980-81 school year pursuant to the Jefferson Parish School Board Teacher Tenure Evaluation Program.

16.

On June 3, 1980, the final conference pursuant to the Tenure Teacher Evaluation Program was held between William Sumrall and Joycelyn Jones.

17.

On September 18, 1980, a conference was held between Ms. Ciolino and Mrs. Jones concerning the excessive amount of noise emanating from her classroom. Ms. Ciolino

suggested that Mrs. Jones seat these students in alphabetical order, require them to sit in the assigned seats each day and to establish rules and regulations for these students to write in their notebooks. She also suggested that Mrs. Jones have work prepared for the entire classroom period and that she attend a workshop on "Classroom Management", which was being conducted free of charge by the Jefferson Parish School Board.

18.

On October 3, 1981, Mrs. Doris Rappold, Personnel Evaluator, observed Mrs. Jones' English class and on October 7th at which time she discussed problems Mrs. Jones was having with her teaching techniques and classroom management and made suggestions to assist her in approximately nine different areas.

19.

On October 31, 1980, Ms. Ciolino observed Mrs. Jones' class. A post-observation conference was held between Ms. Ciolino and Mrs. Jones on November 13, 1981 at which time Ms. Ciolino's findings concerning Mrs. Jones' problems, classroom management and preparation of lesson plans were discussed.

20.

On November 10, 1980, Mrs. Rappold again observed Mrs. Jones' English class and prepared a letter of November 13, 1980 to discuss her observations with Mrs. Jones. Mrs. Rappold recommended improvement in the preparation of lesson plans and also better classroom and teaching organization and management of the students.

On December 3, 1980, Ms. Margaret Goodman, English Consultant, observed Mrs. Jones' class and discussed with her on December 5, 1980 suggestions to improve her teaching technique and classroom management. She again suggested that Mrs. Jones be specific in all directions to students and that she establish a better sequencing of her classroom activities. She again reminded Mrs. Jones that she should be aware of the students activities during class and, in particular, she should deal with disrespectful actions on the part of the students immediately rather than ignoring them.

On December 8, 1980, Mr. William Summrrall observed Mrs. Jones' class and found some improvement in Mrs. Jones' classroom techniques and management.

On January 23, 1981, Mrs. Rappold observed Mrs. Jones' class and discussed her observations with Mrs. Jones at that time. She again pointed out to Mrs. Jones that her lesson plans must be stated in student objectives and not in teacher objectives. She noted some improvement during the month of December but then she also noted that Mrs. Jones lapsed back into her former incorrect practice during the week of January 9, 1981. She also pointed out that Mrs. Jones showed a lack of knowledge of the subject matter she was teaching with respect to regular and irregular verbs. She discussed again Mrs. Jones' classroom management problem and lack of awareness of student behavior and actions. She also noted

the lack of improvement on Mrs. Jones' part in responding and implementing suggestions that had been made to her in these areas.

24.

During February, 1981, Mrs. Jones violated School Board Guidelines by engaging in the unauthorized sale of candy on school grounds at improper times.

25.

Based upon the recommendations and findings of the Principal and Personnel Evaluators, Dr. Melvin Gruwell, Acting Superintendent for the Jefferson Parish School Board, recommended Mrs. Jones' termination as a teacher in the Jefferson Parish School Board because of her willful neglect of duty and/or competency. Mrs. Jones received notice of his recommendation in a letter to her from Dr. Gruwell dated May 4, 1981.

26.

No competent evidence was submitted to the Court from the testimony of Mrs. Jones or from the cross examination of Mr. Sumrall and Ms. Ciolino that would support any allegation that a conspiracy existed between the Jefferson Parish School Board, any of its employees or agents and any of the defendants in the case entitled "Hurie Jones vs. John Mitchell, et al", Civil Action No. 78-1108.

27.

No evidence was submitted to this Court to substan-

tiate the plaintiffs' claim that the defendant, Jefferson Parish School Board, or any of its agents or employees acted under color of state law in violating the plaintiffs' civil rights.

28.

There is a complete lack of evidence submitted by the plaintiffs to show any acts of racial discrimination on the part of the Jefferson Parish School Board or any of its agents or employees.

RESPECTFULLY SUBMITTED,

JACK A. GRANT,
Attorney for Defendant,
Jefferson Parish School Board
220 Lavoisier Street
Gretna, Louisiana 70053
368-7888

CERTIFICATE

I hereby certify that a copy of the above pleading has been served on opposing counsel by depositing same in the U.S. Mail, postage prepaid, on this 16th day of October, 1981.

JACK A. GRANT

A-15

APPENDIX "C"

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NO. 81-3601

JOYCELYN M. JONES, ET AL.,

Plaintiffs-Appellants,

versus

JEFFERSON PARISH SCHOOL BOARD,

Defendant-Appellant.

**Appeal from the United States District Court for the
Eastern District of Louisiana**

ON SUGGESTION FOR REHEARING EN BANC

(Opinion September 17, 5 Cir., 1982, __F.2d__).

(October 28, 1982)

**Before CLARK, Chief Judge, POLITZ and HIGGIN-
BOTHAM, Circuit Judges.**

PER CURIAM:

(X) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor

Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the suggestion for Rehearing En Banc is DENIED.

() Treating the suggestion for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of said judges and a majority of said judges not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

United States Circuit Judge

A-17

APPENDIX "D"

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NO. 80-3734

HURIE JONES, ET AL

Plaintiffs-Appellants

VS.

JOHN MITCHELL, ET AL

Defendants-Appellees

AND

NO. 81-3601

JOYCELYN M. JONES, ET AL

Plaintiffs-Appellants

VS.

JEFFERSON PARISH SCHOOL BOARD

Defendant-Appellee

AND

NO. 81-3204

HURIE JONES

Plaintiff-Appellant

VS.

ORLEANS PARISH SCHOOL BOARD

Defendant-Appellee

**NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES**

PLEASE TAKE NOTICE THAT Appellants Joycelyn M. Jones, Hurie Jones, Mechelle D. Jones, Comeco C. Jones and Kim B. Jones are taking this consolidated appeal from the entire or complete judgments rendered and entered into the records of these cases against appellants by this court on October 18, 1982, October 28, 1982 and November 16, 1982.

This appeal, civil action No. 80-3734, is taken pursuant to Rules 10, 11, 12, 15, 28, 29 and 38 of the Supreme Court of the United States.

Further, Appellants are taking this appeal pursuant to the following Constitutional and statutory provisions: 28 U.S.C.A. Section 1331, 28 U.S.C.A. Section 1343, 42 U.S.C.A. Sections 1981, 1983, 1985 and the First, Fourth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

Finally the pendent jurisdiction of this court is invoked pursuant to Louisiana Civil Code Articles 2315, 2315.1, 2317, 2320 and 2324.

This appeal, in civil action No. 81-3601, is taken pursuant to Rules 10, 11, 12, 15, 28, 29 and 38 of the Supreme Court of the United States.

Further, appellants are taking this appeal pursuant to the following constitutional and statutory provisions; particularly the First, Fifth, and Fourteenth Amendments, 28 U.S.C.A. Section 1331, 28 U.S.C.A. Section 1343, 42 U.S.C.A. Section 1981, 42 U.S.C.A. Section 1983, 42 U.S.C.A. Section 1985, 28 U.S.C.A. Section 1915, Rule 24 (a) of the Federal Rule of Appellate Procedure, Rule 2.4 of the Local Federal Rules of Civil Procedure, Rule 8(a), 57

and 65 of the Federal Rules of Civil Procedure and 28 U.S.C.A. Section 2201.

Finally, pendent jurisdiction of this court is invoked, for the purpose of redressing appellants state law claims, pursuant to Louisiana Civil Code Articles 2315, 2317, 2320, 2324, R.S. 17:441, R.S. 17:443, R.S. 17:281, R.S. 17:391.5, R.S. 17:24.3c(2) through 12.

This appeal, civil action No. 81-3204, is taken pursuant to Rules 10, 11, 12, 15, 28, 29 and 38 of the Supreme Court of the United States.

Further, appellant is taking this appeal pursuant to the following constitutional and statutory provisions: specifically the First (1st), Fifth (5th) and Fourteenth (14th) Amendments to the United States Constitution and the applicable statutory provisions thereto; specifically 28 U.S.C.A. Section 1331, 28 U.S.C.A. Section 1343, 42 U.S.C.A. Section 1983, 42 U.S.C.A. Section 1985, 28 U.S.C.A. Section 2201 and 2202, 42 U.S.C.A. Section 2000 3-5 (f). Appellant's civil action is further authorized and instituted pursuant to Section 706 (F) (1) and (3) of Title VII if the civil rights act of 1864, as amended by the Equal Employment Opportunity Act of 1972, Public law No. 92-261, hereafter referred to as Title VII, 42 U.S.C.A. Section 1981, Rules 8(a) and 57 of the Federal Rules of Civil Procedure; accordingly, this court has jurisdiction over this controversy pursuant to the foregoing provisions.

Finally, pendent jurisdiction of this court is sought or invoked pursuant to R.S. 17:461, R.S. 17:462 and Louisiana Civil Code Articles 21, 1761, 1765, 1779, 1901, 1926, 1930, 1934(2) and (3), 2315, 2317, 2320, 2324, 3538 and 3544.

Appellants are appealing jointly or consolidated the two above described cases, styled as civil action No. 80-3734; Hurie Jones, ET AL VS. John Mitchell, ET AL and civil action No. 81-3601; Joycelyn M. Jones, ET AL VS. Jefferson Parish School Board; because both cases grew out of and evolved as an integral part of one joint and continuous covert conspiracy in which appellees acted jointly under color and pretense of state law, to deprive plaintiffs, appellants herein, of their rights, privileges immunities and entitlements as guaranteed by the United States Constitution by first denying appellants of equal protection of the laws and then by obstructing justice, in complicity with named third parties, and denying appellants of due process of laws in an attempt to conceal appellees, and their joint third party co-conspirators complicity in the first action, styled as Hurie Jones, ET AL VS. John Mitchell, ET AL, Civil Action No. 80-3734.

Further, appellants are appealing jointly or consolidated, in the same jurisdictional statement, the above described cases styled as Joycelyn M. Jones, ET AL VS. Jefferson Parish School Board, civil action No. 81-3601 and Hurie Jones VS. Orleans Parish School Board, Civil Action No. 81-3204; because the ultimate issues, arising under the Constitution of the United States and specific state statutory laws are identical.

/S/HURIE JONES

Hurie Jones

/S/JOYCELYN M. JONES

Joycelyn M. Jones
2103 La Quinta Via
Harvey, Louisiana 70058
(504) 367-9621
November 23, 1982

NO. 82-6239

Office - Supreme Court, U.S.

FILED

MAR 17 1983

**ALEXANDER L. STEVAS,
CLERK**

**In the
Supreme Court of the United States**

OCTOBER TERM, 1982

JOYCELYN M. JONES AND HURIE JONES,

APPELLANTS

VS.

JEFFERSON PARISH SCHOOL BOARD,

APPELLEE

**ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS, FIFTH CIRCUIT**

BRIEF IN OPPOSITION

**JACK A. GRANT
ATTORNEY FOR APPELLEE
220 LAVOISIER STREET
GRETN, LOUISIANA 70053
TELEPHONE: (504) 368-7888**

TABLE OF CONTENTS

	PAGES
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
JURISDICTION OF THE COURT.....	1
STATEMENT OF CASE.....	2
SUMMARY OF ARGUMENTS.....	2
ARGUMENT 1.....	3
ARGUMENT 2.....	4
ARGUMENT 3.....	5
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7

TABLE OF AUTHORITIES

CASES	PAGES
<i>Perry v. Sindermann</i> , 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972).....	4
<i>Board of Regents v. Roth</i> , 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).....	4
<i>Harrah Independent School District v. Martin</i> , 440 U.S. 194, 99 S.Ct. 1062, 59 L.Ed.2d 248 (1979).....	4
<i>Kelley v. Johnson</i> , 425 U.S. 238, 96 S.Ct. 1440, 47 L.Ed.2d 708 (1976).....	5
<i>Goss v. Lopez</i> , 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).....	5
<i>Epperson v. Arkansas</i> , 393 U.S. 97, 89 S.Ct. 226, 21 L.Ed.2d 228 (1968).....	5

STATUTORY AUTHORITIES	PAGES
28 U.S.C. Section 1331	1
28 U.S.C. Section 1343 (3) and (4)	1, 2
28 U.S.C.A. Section 1254(1)	1
28 U.S.C.A. Section 2103	2
Supreme Court Rule 16	2
Supreme Court Rule 17.1	5
Supreme Court Rule 22	2
42 U.S.C. Section 1983	2
42 U.S.C. Section 1985	2
La. Revised Statute 17:443	4

CONSTITUTION OF THE UNITED STATES

Fourteenth Amendment	2, 3
----------------------------	------

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JOYCELYN M. JONES AND HURIE JONES,

APPELLANTS

VS.

JEFFERSON PARISH SCHOOL BOARD,

APPELLEE

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS, FIFTH CIRCUIT

BRIEF IN OPPOSITION

JURISDICTION OF THE COURT

Appellants have invoked the jurisdiction of the United States Supreme Court pursuant to 28 USC §1331 and 28 USC §1343 (3) and (4). See Pages 1 and 2 of Appellants' Jurisdictional Statement.

Appellee contends that this Honorable Court has jurisdiction over this matter pursuant to 28 USCA §1254 (1); and, therefore, the review by this Court should be by a writ of certiorari and not by appeal.

Appellee requests that this Court apply the provisions of 28 USCA §2103 and treat appellants' appeal and jurisdictional statement filed herein as a petition for writ of certiorari. Appellee files herein a brief in opposition pursuant to the rules of Supreme Court Rule 22 instead of a motion to dismiss or affirm pursuant to Rule 16.

STATEMENT OF CASE

The appellants brought this action pursuant to 42 USC §1983, 1985, and 28 USC §1343 alleging that Mrs. Jones was wrongfully terminated from her teaching position by the appellee, the Jefferson Parish School Board. The District Court denied the appellants' motion for a temporary restraining order and after a full adversary hearing, the District Court dismissed appellants' motion for a preliminary injunction and all of their other claims.

The United States Court of Appeals for the Fifth Circuit, treating the appellants' appeal as both a denial of a preliminary injunction and a dismissal of the action, affirmed.

The decision of the District Court can be located in 523 F.Supp. 816 and the opinion of the Court of Appeals affirming the District Court's judgment is in Appendix A of appellants' jurisdictional statement. Its affirmation is located in 688 F.2d 837.

SUMMARY OF ARGUMENTS

1.

Mrs. Jones was accorded all of the elements of procedural due process required by the Fourteenth Amend-

3

ment of the United States Constitution.

2.

The due process clause of the Fourteenth Amendment of the United States Constitution does not afford appellants substantive due process rights in the premises.

3.

Questions presented by appellants' jurisdictional statement fail to raise any special or important reasons for granting a writ of certiorari.

ARGUMENT

1.

The findings of fact itemized by the District Court accurately reflects the extensive testimony taken in this matter. The findings by the District Court show that Mrs. Jones was fully advised over a period of approximately two school years of the difficulties that she was having with classroom management. Numerous attempts were made by various school personnel to assist her over this two year period. However, Mrs. Jones' performance as a teacher did not improve and in a letter dated May 4, 1981, she was recommended for termination by the Superintendent of Schools. His letter fully explained the deficiencies in Mrs. Jones' performance as a teacher. (See Finding of Fact No. 27).

Mrs. Jones elected to have a private tenure hearing and she was notified that her hearing was scheduled for June 8th, 9th, 15th, and 16th, 1981. However, the attorney

representing Mrs. Jones advised the School System that Mrs. Jones was going to resign her teaching position.

Upon the opening of the 1981-82 school year, Mrs. Jones reported to work and refused to resign. Accordingly, her tenure hearing was rescheduled for October 12th, 13th, and 15th, 1981.

The appellee has fully afforded Mrs. Jones all of her procedural due process rights guaranteed by the Fourteenth Amendment of the United States Constitution. In particular, she was given full and detailed notice of the reasons for the Superintendent's recommendation for termination and a tenure hearing was scheduled before the Jefferson Parish School Board pursuant to La. R.S. 17:443. *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed. 2d 570 (1972); *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

Ultimately, a hearing was held by the Jefferson Parish School Board on the Superintendent's recommendation to terminate Mrs. Jones. The decision to terminate was ratified at a public meeting of the Board on October 21, 1981.

2.

Both the District Court and the Fifth Circuit Court of Appeals held that substantial evidence and reasons existed to justify Mrs. Jones' termination. The appellants, in essence, desire that this Honorable Court review the substantive issues and the findings of fact in this case.

In *Harrah Independent School District v. Martin*, 440 U.S. 194, 99 S.Ct. 1062, 59 L.Ed.2d 248 (1979), this

Honorable Court held that in order to invoke the substantive aspects of the due process clause of the Fourteenth Amendment, appellant must raise an interest "...resembling 'the individual's freedom of choice with respect to certain basic matters of procreation, marriage, and family life.' *Kelley v. Johnson, supra*, 425 U.S., at 244, 96 S.Ct., at 1444;". 440 U.S., at 198, 99 S.Ct., at 1064.

Historically, this Honorable Court has avoided intervening into the substantive issues in the areas of public education. In *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975), this Court stated:

"...We are also mindful of our own admonition:

'judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint...By and large, public education in our Nation is committed to the control of state and local authorities.' *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 226, 270, 21 L.Ed. 228 (1968);' " 419 U.S. at 578, 95 S.Ct. at 738.

3.

Rule 17.1 of the Supreme Court Rules requires that before a writ of certiorari will be granted, special or important reasons must be raised in the petition for review. Appellants' jurisdictional statement presents no new important questions of federal law which have not already been decided nor does it raise any federal questions which are in conflict with decisions of this Honorable Court. Appellants desire this Honorable Court to review the findings of fact

which have already been determined by the District Court and affirmed by the Fifth Circuit Court of Appeals.

CONCLUSION

The appellee submits that this Honorable Court should deny appellants' writ of certiorari or in the alternative, affirm the decision of the United States Court of Appeals for the Fifth Circuit because no federally guaranteed due process rights of Mrs. Jones were violated.

With respect to all of the other numerous allegations raised by the appellants, both the District Court and the Fifth Circuit considered each of those allegations and found them all to be without merit. Accordingly, this Honorable Court should likewise deny appellants' writ.

Respectfully submitted,

JACK A. GRANT
Attorney for Appellee,
Jefferson Parish School Board
220 Lavoisier Street
Gretna, Louisiana 70053
Telephone: (504) 368-7888

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been forwarded to Hurie Jones, Joycelyn M. Jones at 2103 La Quinta Via, Harvey, Louisiana, 70058, by United States mail, postage prepaid, this ____ day of March, 1983.

JACK A. GRANT